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FEDERAL COMMUNICATIONS COMMISSION  
OFFICE OF THE SECRETARY

**BEFORE THE  
Federal Communications Commission  
WASHINGTON, D.C.**

**DOCKET FILE COPY ORIGINAL**

In the Matter of )

)  
Application of BellSouth Corporation, )  
BellSouth Telecommunications, Inc., and )  
BellSouth Long Distance, Inc. )  
Pursuant to Section 271 of the )  
Communications Act of 1934, as )  
amended, To Provide In-Region )  
InterLATA Services to Louisiana )

CC Docket No. 97-231

**REPLY OF SPRINT COMMUNICATIONS COMPANY L.P.**

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**REPLY OF SPRINT COMMUNICATIONS COMPANY L.P.**

Sprint Communications Company L.P. ("Sprint"), by its attorneys, hereby replies to the numerous comments and oppositions filed in the above-captioned proceeding.

**INTRODUCTION AND SUMMARY**

Nearly every commenting party in this proceeding, including the Department of Justice, agrees that BellSouth's Section 271 application for Louisiana must be denied. The parties have now supplied the Commission with ample documentation to support a quick and simple rejection.

First, the Commission could reject this application because Louisiana is in the "ramp up" period. As Sprint demonstrated in its Petition to Deny, the operational PCS providers in Louisiana do not in fact satisfy Section 271's requirement for a *competing* provider of telephone exchange service since they do not *compete* for such services. At the same time, qualifying requests from prospective wireline competitors that have yet to offer facilities-based residential service render Track B unavailable.

This application thus presents precisely the same situation that warranted the narrowly tailored rejection by the Commission of SBC's Oklahoma application.

BellSouth's record in checklist compliance offers additional obvious bases for rejection. BellSouth consistently fails to satisfy the checklist requirements. Moreover, when BellSouth disagrees with the FCC's (or the Justice Department's) interpretation of a checklist requirement (e.g., resale prices for certain services) it simply refuses to comply and explicitly notes that refusal in its application. In this regard, BellSouth should receive no credit for arriving at the FCC's doorstep in wolf's and not sheep's clothing. In sum, BellSouth's Louisiana application is obviously and intentionally defective and should be treated accordingly with a prompt denial.

**I. BELLSOUTH IS IN THE "RAMP UP" PERIOD IN LOUISIANA.**

As Sprint explained in its Petition to Deny (and as BellSouth essentially concedes),<sup>1</sup> BellSouth has received qualifying requests from multiple prospective wireline CLECs that will result in the provision of the kind of competing residential

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<sup>1</sup> See Sprint Petition to Deny at 20-21; BellSouth Br. at 17-20 (discussing CLEC interconnection agreements, facilities investment, and CLEC current and planned offerings of facilities-based local exchange service in Louisiana). Though BellSouth does not concede explicitly that it has received a qualifying request, BellSouth discusses CLEC provisioning of business service within Louisiana as well as requests for interconnection by CLECs intending to provide facilities-based residential service. Moreover, it does not allege that any CLEC has negotiated in bad faith or has failed to abide by any applicable interconnection implementation schedule.

and business services described in Section 271(c)(1)(A). These requests foreclose Track B. Moreover, BellSouth's failure to prove that any of the CLECs with a qualifying request has actually begun to offer facilities-based residential service means that Louisiana is in the "ramp up" period.

As Sprint has also already explained, BellSouth is incorrect that PCS providers can currently qualify as "competing" providers under Section 271(c)(1)(A). The FCC has consistently found that PCS, while potentially a substitute for wireline local service, does not currently compete with landline LECs:

Mobile telephone service providers are currently positioned to offer products that largely complement, rather than substitute for, wireline local exchange.<sup>2</sup>

In various contexts, the FCC has further explained its view, relying on, among other things, price,<sup>3</sup> network architecture,<sup>4</sup> and consumer and industry perception and practice.<sup>5</sup> BellSouth

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<sup>2</sup> Applications of NYNEX Corp., and Bell Atlantic Corp., For Consent to Transfer Control of NYNEX Corp. and Its Subsidiaries, FCC 97-286, *Memorandum Opinion and Order* at ¶ 90 (rel. Aug. 14, 1997) ("BA-NYNEX Order"). The Order also notes that "fixed wireless may ultimately become a viable (and, in some markets, a formidable) substitute for wireline service, but whether that occurs depends on spectrum availability, technological issues, and other future events." *Id.* at ¶ 91.

<sup>3</sup> Implementation of Section 6002(b) of the Omnibus Budget Reconciliation Act of 1993, Second Report, FCC 97-75, 12 FCC Rcd. 11266 at 11323-11326 (rel. Mar. 25, 1997).

<sup>4</sup> BA-NYNEX Order at ¶¶ 90-91.

<sup>5</sup> Applications of Pittencrieff Communications, Inc. and Nextel Communications, Inc. For Consent to Transfer Control of Pittencrieff Communications, Inc. and Its Subsidiaries, CWD Dkt. No. 97-22, *Memorandum Opinion and Order* (rel. Oct. 24, 1997).

has not suggested that PCS service in Louisiana is materially different than PCS service elsewhere, and as such provides no exception to the FCC's firm conclusion that PCS does not currently compete with landline local service.

Indeed, Sprint has provided substantial evidence demonstrating that PCS offered in Louisiana cannot be considered a substitute for BellSouth's landline local exchange service. As Professor Carl Shapiro explained in his Declaration, even BellSouth's data demonstrate that wireline service is less expensive than PCS for all but "a very, very small portion of customers under very circumscribed conditions." PCS is simply not priced to compete with BellSouth's local landline service. Professor Shapiro also found that PCS advertisements focus on competition with cellular, not wireline, carriers:

PrimeCo and Sprint PCS, both PCS providers in the New Orleans market, emphasize in their advertisements the advantages of PCS over cellular, and make no reference to wireline service in general or BellSouth local service in particular.<sup>6</sup>

The Justice Department also agrees that PCS is not a substitute for wireline service.<sup>7</sup> This conclusion is based on the Department's assessment of the differences in the level and structure (e.g., only PCS customers pay for in-coming calls) of prices charged by PCS and wireline service providers.<sup>8</sup>

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<sup>6</sup> Shapiro Louisiana Dec. at 6.

<sup>7</sup> See Justice Department Evaluation at 8.

<sup>8</sup> See id.

Given this overwhelming evidence, the only way PCS providers could qualify as Track A requesting carriers is if the phrase "competing providers of telephone exchange service" were somehow to include carriers providing services of only marginal substitutability. While the Justice Department concludes firmly that there is insufficient substitutability under antitrust concepts, it has chosen not to reach the question of whether this analysis applies as well under Section 271.<sup>9</sup> The Department instead defers to the FCC to determine whether "a limited degree of substitution between PCS and wireline service among a small proportion of customers" is enough to meet the statutory standard.<sup>10</sup> But this issue is easily resolved by the Commission in favor of the economic principles which underlie the antitrust standard.

First, Congress has never indicated that the principles of economics developed in antitrust may be applied only in the context of antitrust enforcement. Those principles are of course not articulated in the antitrust statutes, but have instead been developed and applied in order to ensure that cases brought under the antitrust laws are addressed in a principled fashion that promotes consumer welfare. The same principles should apply to a

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<sup>9</sup> While Ameritech filed comments in this proceeding for the purpose of supporting BellSouth's PCS argument, it does not attempt to address the meaning of the term competing. Ameritech's comments only make the uncontroversial point that PCS providers may qualify as competing providers of telephone exchange service. See Comments of Ameritech.

<sup>10</sup> See Justice Department Evaluation at 9.

provision in another economic regulatory statute that addresses issues of market power.

Indeed, as Congress well knew, the FCC has a long history of relying on consumer welfare economics as the basis for setting regulations applicable to firms engaged in activities subject to its jurisdiction. Among this learning are the concepts of market power and the degree to which market power may be constrained by other products or services which consumers and suppliers deem to be substitutable.<sup>11</sup> In light of this pre-1996 history, the logical expectation is that the Commission would continue to apply these fundamental economic principles to determine whether a carrier provides competing local service under Section 271(c)(1)(A).

Furthermore, adopting a distorted definition of the term "competing" in Section 271(c)(1)(A) would subvert the very purpose of establishing Track A as the primary avenue for BOC entry into the in-region, interLATA market. The Commission has found that Congress established Track A as the primary avenue for Section 271 review so that BOCs would have the incentive "to cooperate with potential competitors in the provision of access and interconnection and thereby facilitate competition in local exchange markets."<sup>12</sup> Under this rationale, Track A is preferred

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<sup>11</sup> See Sprint Petition to Deny at 9 n.10 (citing examples of the Commission's reliance on antitrust substitutability in pre-1996 Act proceedings).

<sup>12</sup> See Application of SBC Communications Inc., Pursuant to Section 271 of the Communications Act of 1934, as amended, To Provide In-Region, InterLATA Services In Oklahoma, CC



because consumers benefit from the presence of a facilities-based Track A competitor. The presence and success of such a competitor is also evidence that the barriers to competing with the BOC have been (at least to some extent) lowered. But the presence of a carrier providing services of only limited substitutability such as PCS would offer few of the consumer benefits Track A is designed to deliver. The presence of such a competitor would also offer little evidence that the barriers to competition with the BOC have been removed. The purpose of Track A therefore mandates that only carriers offering true competition in the form of substitute services can qualify as competing providers of local service under Section 271(c)(1)(A).

**II. BELL SOUTH HAS NOT MET THE REQUIREMENTS OF THE CHECKLIST.**

As in the South Carolina proceeding, Sprint and all but a few commenting parties have documented BellSouth's numerous failures to meet the requirements of the competitive checklist -- indeed, BellSouth itself notes some of these deficiencies for the FCC. As such, the FCC should dispense summarily with this application.

**A. BellSouth Fails To Provide Access To Its OSS On A Non-Discriminatory Basis.**

In its Petition to Deny, Sprint cited to multiple examples in which BellSouth provides CLECs access to its OSS that is markedly inferior to the access it provides itself.<sup>13</sup> Problems

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Docket No. 97-121, *Memorandum Opinion and Order* at ¶ 46 (rel. June 26, 1997).

<sup>13</sup> See Sprint Petition to Deny at 27-33.

with CLEC OSS access that are not visited upon BellSouth's own customer representatives include the following: (1) BellSouth does not provide an adequate integrated pre-ordering and ordering interface for CLECs; (2) LENS is not a "machine-to-machine" pre-ordering interface, thus requiring extensive manual intervention by BellSouth employees to complete pre-ordering functions; (3) LENS does not provide the functionality for a CLEC to issue a change order to BellSouth -- such functionality is still under development; (4) LENS does not permit a CLEC to electronically change the features on a customer's current service; (5) LENS does not provide a CLEC with the same "on-line, front-end" edits available to BellSouth; and (6) for CLECs, BellSouth's "electronic" Trouble Analysis and Facilities Interface still requires manual intervention by BellSouth representatives. Given these disparities, it is hardly surprising that BellSouth has also failed to provide the FCC and CLECs with adequate performance measures to assess whether BellSouth's OSS is being provided on a non-discriminatory basis.

In addition to these general deficiencies, Sprint has specific experiences with BellSouth in Florida which prompted Sprint to file a complaint with the Florida Commission.<sup>14</sup> These experiences include the following:<sup>15</sup> (1) BellSouth has frequently failed to provide timely notice to Sprint of problems

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<sup>14</sup> Sprint's Complaint is on file with the Commission as App. C to its Petition to Deny.

<sup>15</sup> See Sprint Petition to Deny at 31-33.

with orders, resulting in delayed installation for Sprint customers; (2) BellSouth has frequently failed to cancel disconnect orders for Sprint customers, leaving Sprint customers with no service at all; (3) BellSouth has often made mistakes on Sprint's bills, resulting in additional delays and administrative work to correct the errors; and (4) Sprint customers have often experienced interruptions and degradation in service caused by problems in BellSouth's network.

Other commenting parties have cited further problems encountered in the access BellSouth offers to its OSS. For example, commenters have noted that BellSouth provides inadequate OSS training and testing for CLECs.<sup>16</sup> BellSouth's support personnel themselves are frequently incapable of handling problems CLECs encounter with EDI.<sup>17</sup> In addition, LCI notes that BellSouth has lost LCI purchase orders in its system.<sup>18</sup>

The Justice Department further confirms that BellSouth has not come close to demonstrating that its OSS access offerings could support significant competitive entry.<sup>19</sup> Indeed, the Department has sensibly relied on the analysis it submitted in support of its Evaluation of BellSouth's South Carolina application to conclude that the virtually identical OSS offerings at issue here fail to meet the FCC's parity or

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<sup>16</sup> See, e.g., Comments of LCI at 3; Comments of AT&T at 48.

<sup>17</sup> See Comments of LCI at 6.

<sup>18</sup> See id. at 4.

<sup>19</sup> See Justice Department Evaluation at 16-20.

opportunity to compete standards (the former standard applied where there is a BellSouth retail analog and the latter standard applied in the absence of a BellSouth retail analog). For example, the Department points out that BellSouth still has not instituted adequate OSS performance measures<sup>20</sup> or provided evidence that its arrangements for OSS access have been adequately "stress tested."<sup>21</sup>

**B. BellSouth Fails To Provide Adequate Access To UNEs.**

The Justice Department has proposed a helpful standard for determining whether a BOC is providing access to UNEs in a manner that allows requesting carriers to combine them. The Department suggests that BOCs be required to (1) describe the manner in which they plan to offer UNEs for recombination; (2) show that such offering is reasonable and non-discriminatory; and (3) show that they have the "practical ability to process and provision unbundled elements that are to be combined by CLECs."<sup>22</sup> There can be no question that BellSouth has failed to meet this or any other appropriate standard for evaluating BOC UNE recombination offerings.

As the Department observes, the provision in BellSouth's Louisiana SGAT granting CLECs nothing more than the right to "gain access to all of the unbundled elements" for the purposes

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<sup>20</sup> See id. at 19.

<sup>21</sup> See id. at 20.

<sup>22</sup> See id. at 10-11.

of recombination is insufficient.<sup>23</sup> The Louisiana SGAT offers CLECs no detail and thus makes it impossible to evaluate the viability of entry based on recombined UNEs.

The only important detail offered by BellSouth on the manner in which it will permit CLECs to combine UNEs is that it will restrict CLECs to relying on collocation arrangements instead of merely permitting seamless connection of BellSouth facilities. Putting aside the question of whether BellSouth can legally insist on such a restriction (a dubious proposition indeed, given that Section 251(c)(3) provides a basis for CLEC access to ILEC networks that is independent of Section 251(c)(6), the collocation provision), AT&T has exhaustively demonstrated that BellSouth's current collocation offerings cannot support efficient recombination.<sup>24</sup> In addition, as the Department points out, BellSouth has not even shown that its prices for collocation are cost-based.<sup>25</sup>

Finally, BellSouth cannot point to a record of successful CLEC reliance on its recombination offering. As the Department points out, the absence of such a record is a serious problem, since the BOC networks were not designed to support the provision and recombination of UNEs.<sup>26</sup> In short, there is no reason to believe that CLECs could possibly rely on the recombination of

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<sup>23</sup> See id. at 13 (quoting BellSouth's Louisiana SGAT).

<sup>24</sup> See, e.g., AT&T Falcone and Leshner Aff. at ¶¶ 38-96.

<sup>25</sup> See Justice Department Evaluation at 26-27.

<sup>26</sup> See id. at 15-16.

BellSouth's UNEs to enter the local market in Louisiana on any commercially significant scale.

**C. BellSouth Fails To Meet Numerous Other Checklist Requirements.**

In addition, BellSouth fails (or simply refuses) to provide other checklist items to CLECs on a non-discriminatory basis. Sprint cited the following in its Petition to Deny: (1) BellSouth has unlawfully conditioned and restricted the resale of its services;<sup>27</sup> (2) BellSouth's prices for UNEs in Louisiana are not geographically deaveraged;<sup>28</sup> and (3) BellSouth does not permit CLECs to combine UNEs to provide services BellSouth offers at retail.<sup>29</sup>

Other commenters noted these additional deficiencies: (1) BellSouth charges new entrants the entire cost of interim number portability, in violation of the requirement that such costs be shared between the ILEC and the CLEC;<sup>30</sup> (2) BellSouth has not yet made available unbundled local switching;<sup>31</sup> and (3) BellSouth continues to "brand" all of its operator and directory assistance services under the BellSouth name.<sup>32</sup> Based on these obvious

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<sup>27</sup> Sprint Petition to Deny at 36-40

<sup>28</sup> Id. at 40-41.

<sup>29</sup> Id. at 41-43.

<sup>30</sup> See Comments of MCI at 59-60.

<sup>31</sup> See Comments of AT&T Corp. at 23.

<sup>32</sup> See, e.g., Comments of AT&T Corp. at 30-31.

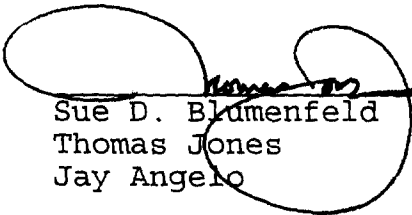
problems alone, the FCC should summarily deny BellSouth's application.

**CONCLUSION**

For the foregoing reasons, BellSouth's Louisiana Section 271 application must be denied.

Respectfully submitted,

**SPRINT COMMUNICATIONS COMPANY L.P.**



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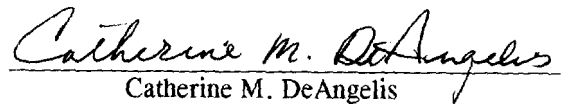
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